

**July 18, 2006**

SUBJECT: **2006-0087** – Application on a 6,211 square foot site located at **734 Ashbourne Dr** (near E. Fremont Ave) in an R-0 (Low-Density Residential) Zoning District.

Motion Variance from Sunnyvale Municipal Code section 19.34.040 to allow a six-foot setback where nine feet is required.

REPORT IN BRIEF

Existing Site Conditions Existing single-story residence

Surrounding Land Uses

North Single-Family Residential

South Single-Family Residential

East Single-Family Residential

West Single-Family Residential

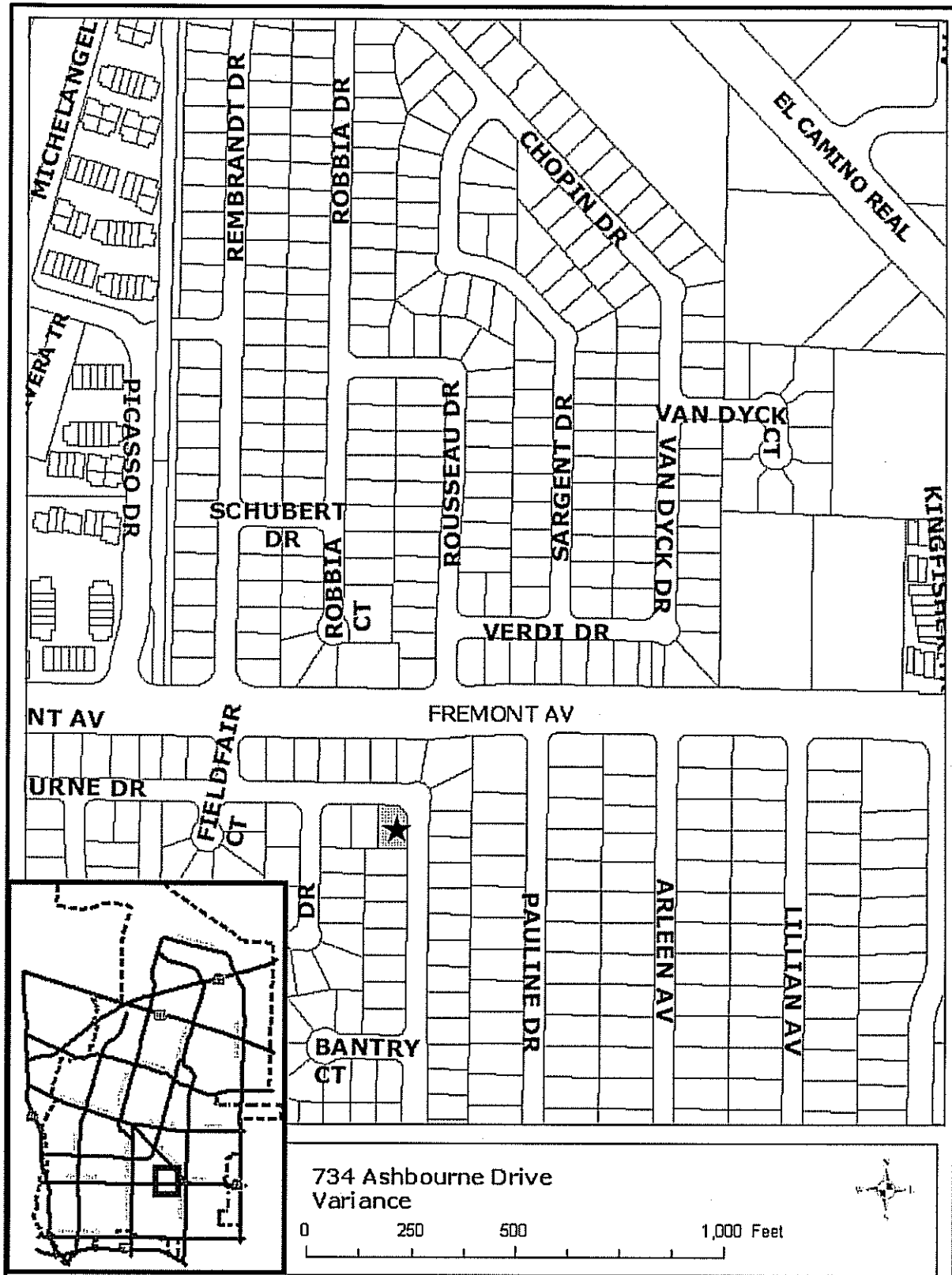
Issues Justifications for a variance

Environmental Status A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

Administrative Hearing Officer's Action Denied Variance Application

Planning Commission's Action Denied the appeal

Staff Recommendation Deny the appeal and uphold the decision to deny the Variance



PROJECT DATA TABLE

	<u>EXISTING</u>	<u>PROPOSED</u>	<u>REQUIRED/ PERMITTED</u>
General Plan	Residential Low Density	Same	Residential Low Density
Zoning District	R-0	R-0	R-0
Lot Size (s.f.)	6,211	Same	6,000 min.
Lot Width (ft.)	52	Same	57 min.
Gross Floor Area (s.f.)	1,798	2,088	2,795 without public hearing
Lot Coverage (%)	29%	35%	45% max.
No. of Buildings On-Site	1	Same	1
Building Height (ft.)	14'6"	Same	30 feet max.
No. of Stories	1	Same	2 max.
Setbacks (facing prop.)			
• Front (ft.)	20'	Same	20' min.
• Right Side (ft.)	6'	6'	4' min.
• Left Side (ft.)	9'	6' (Total 12')	9' min. (Total 12')
• Rear	20'	10'	10' min.
• Rear Encroachment (%)	0	11.3%	25% max.
Parking			
• Total Covered Parking	1	Same	2 min.
• Total Uncovered Parking	2	Same	2 min.

★ Starred items indicate variance from Sunnyvale Municipal Code requirements.

ANALYSIS**Description of Proposed Project**

The applicant is proposing an addition of 290 square feet to an existing 1,798 square foot single-story residence. The addition is proposed in the rear and reducible front yard areas, and the house will total 2,088 square feet when completed. The scope of the project includes expansion of one of three bedrooms into a master suite. The proposed home will have three bedrooms, a family room, living room, kitchen, and a two-car garage.

As part of the project, the applicant is requesting that a portion of the new addition be constructed six feet from the property line, where nine feet is the minimum allowed by Sunnyvale Municipal Code (SMC). This street side yard is considered a front yard area and requires a 20-foot setback but is allowed to be reduced under SMC 19.34.040 to a minimum of nine feet. The birch trees in the area of the addition are proposed to be removed as part of this project.

Background

Previous Actions on the Site: This application was reviewed at the March 2, 2006 Administrative Hearing and was denied. The applicant appealed the decision to the Planning Commission. The Commission heard the application of April 10, 2006 and continued the item for additional information to the April 24, 2006 meeting, where it was denied 6-0. There are no other planning related permits that have been filed since the residence was built in 1964.

Environmental Review

A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions. Class 1 Categorical Exemptions include modifications to existing structures.

Variance

Site Layout: The existing 6,211 square foot parcel is a rectangular lot with the home situated near the center of the lot. The existing home meets all current setback requirements with a six-foot side yard, 21-foot front yard, 12-foot street side reducible front yard, and a 24-foot rear yard. The proposed addition will extend the structure into the reducible front yard area by six feet. (See Attachment E).

The subject parcel is 66 feet wide and 96 feet deep. The lot width meets standards for the R-0 Zoning district since 62 feet is the minimum required for corner lots in this zone. The lot size also meets current SMC standards since 6,000 square feet is the minimum parcel size in the R-0 Zone. Most of the parcels in the surrounding area are similar with 6,000 square feet as the average size. The subject site does not have an irregular configuration, and no physical constraint exists on site (see the Assessor Parcel Map of the neighborhood in Attachment D). The following table shows the parcel sizes for lots in the immediate vicinity.

	Property Address	Square Footage of Lot	Lot Widths
★	721 Ashbourne	6,120 s.f.	65 ft.
★	724 Ashbourne	7,513 s.f.	78 ft.
	725 Ashbourne	6,550 s.f.	65 ft.
	727 Ashbourne	6,050 s.f.	60 ft.
	729 Ashbourne	6,000 s.f.	62 ft.
★	730 Ashbourne	6,329 s.f.	66 ft.
	731 Ashbourne	6,000 s.f.	60 ft.
	732 Ashbourne	6,204 s.f.	64 ft.
	733 Ashbourne	6,200 s.f.	62 ft.
★	734 Ashbourne	6,211 s.f.	66 ft.

Property Address	Square Footage of Lot	Lot Widths
735 Ashbourne	6,466 s.f.	65 ft.
737 Ashbourne	11,558 s.f.	---
1318 Flicker	7,500 s.f.	77 ft.
1324 Flicker	6,191 s.f.	62 ft.
1329 Flicker	6,208 s.f.	64 ft.
1330 Flicker	6,192 s.f.	62 ft.
1335 Flicker	6,208 s.f.	64 ft.
1336 Flicker	6,193 s.f.	62 ft.
1341 Flicker	6,208 s.f.	64 ft.
1342 Flicker	6,194 s.f.	62 ft.
Average	6,600 s.f.	65 ft.

★ Indicates corner lots

Architecture: The proposed addition will match the stucco material that exists on three sides of the home (excluding the front). The addition will also match the existing composition roof material.

The following Guidelines from the Single-Family Design Techniques were considered in the analysis of the project architecture:

Design Policy or Guideline (Architecture)	Comments
<i>2.2 Basic Design Principles Respect the scale, bulk, and character of homes in the adjacent neighborhood.</i>	The addition would occur in the rear and reducible front yards of the existing single-story house. The addition generally respects the existing scale, bulk, and character of the house as seen from the surrounding neighborhood.
<i>3.1 Design Techniques Design homes to respect their immediate neighbors.</i>	
<i>3.1(D) Design Techniques Where significant additions to existing homes are planned, it is generally better to place those additions at the rear of the house or at the side.</i>	The proposed addition is not significant in terms of new square footage versus existing square footage.

Parking/Circulation: As required by Sunnyvale Municipal Code, the site provides a two-car garage and two uncovered parking spaces in the driveway.

Compliance with Development Standards/Guidelines: The site currently meets all standard requirements for the R-0 Zoning District. The requested

Variance would allow an exception to the reducible front yard setback (six feet where nine feet is required).

Expected Impact on the Surroundings: The proposed addition would have a minimal impact to the surrounding neighborhood. If the Variance is approved, a precedent would be set and there could be an increase in Variance requests in the neighborhood, although staff does not believe this scenario would come to fruition. The cumulative effect of structures located closer to the street could have a negative impact on the streetscape and reduce visual open space in the area.

Fiscal Impact

No fiscal impacts other than normal fees and taxes are expected.

Public Contact

Notice of Public Hearing	Staff Report	Agenda
<ul style="list-style-type: none">• Published in the <i>Sun</i> newspaper• Posted on the site• 38 notices mailed to adjacent property owners and residents of the project site	<ul style="list-style-type: none">• Posted on the City of Sunnyvale's Website• Provided at the Reference Section of the City of Sunnyvale's Public Library	<ul style="list-style-type: none">• Posted on the City's official notice bulletin board• City of Sunnyvale's Website• Recorded for SunDial

Administrative Hearing: On March 2, 2006, the Administrative Hearing Officer considered the Variance application and denied the request. After presentations by staff and the applicant, the Hearing Officer stated that the required findings could not be made and that granting the Variance would constitute a special privilege not enjoyed by surrounding property owners. (See Attachment F for Administrative Hearing Minutes). The applicant appealed this decision on March 8, 2006.

Planning Commission Hearing (April 10th): This application was heard before the Planning Commission at the April 10, 2006 meeting. At that time the Commission continued the item to the April 24th meeting so that staff could research the following two issues: 1) the residence has a unique circumstance since it has been raised out of a flood zone, and 2) the sewer connection to the home requires the addition to be located on the side of the residence. The specific issues discussed at the hearing are discussed below:

Flood Zone Information

A majority of the homes in the Ashbourne and Flicker Way neighborhood are in the AO flood zone (depths of one to three feet). The subject home was raised out of the flood zone when it was constructed by raising the grade elevation of the parcel. The parcel was raised by approximately three to four feet. Since that time the property owner applied and received approval to have the residence removed from the AO flood zone.

The grade difference in the site has little effect on construction techniques and costs required to build the addition. If the addition is placed in the rear of the existing structure, then no grade change is required. If the addition is placed on the side (as proposed by the applicant) the elevated grade will be required to be extended a short distance towards the street in order to create a level area for the addition.

Sewer Connection

The existing sewer lateral is connected into the City main line on the Ashbourne side of the residence. All sewer lines are required under the Uniform Plumbing Code to maintain certain gradients (1/8" over 1', rise over run) leading down towards the street away from the house. Typically the existing sewer lateral exceeds the minimum gradient requirements, making a tie-in to the existing line possible. In these cases, the tie-in occurs under the floor of the home and within the existing foundation framework.

In less common circumstances the existing sewer lateral cannot be extended to accommodate a new drain and a sewer line is required to be connected into the lateral closer to the street. In these cases, a second lateral must be trenched underneath the foundation of the home before it can be tied into the existing line leading to the City sewer.

When a second lateral is required to be trenched under the foundation, it becomes more expensive than a standard connection within the foundation walls. Although there is an added cost for this type of project, it is not an uncommon situation for a homeowner in Sunnyvale.

Planning Commission Hearing (April 24th): This application was heard again before the Planning Commission at the April 24, 2006 meeting. At that time the Commission discussed the issue of the sewer connection as well as alternative configurations for the home addition. The Commission ultimately recommended to deny the appeal, stating that they were unable to make the required findings and that there are alternative designs for the addition that would not require a variance from setback requirements.

Conclusion

Applicant's Justification: The applicant has addressed the three required findings for a Variance in Attachment C – Applicant's Letter of Justification. The applicant contends the following:

- Other similar corner lots in the neighborhood have had similar six-foot side yard setback Variances approved.
- The proposed addition would not be detrimental to the public welfare since the addition is not in the vision triangle and the exterior architecture will remain the same.
- Granting the Variance would not grant a special privilege to the applicant, which would not also be enjoyed by the neighbors.

The applicant has also stated the following reasons for granting of the variance:

- Other parcels in the neighborhood are not raised out of the flood zone; therefore this parcel has a unique circumstance relative to other properties in the vicinity.
- The proposed addition to accommodate an accessible bathroom would require a more expensive sewer line connection that would be a hardship to the property owner.
- Granting the Variance would not grant a special privilege to the applicant, which would not also be enjoyed by the neighbors.

Discussion: Staff cannot make the first finding regarding exceptional or extraordinary circumstances or conditions that apply to this property due to the parcel's size, shape, use, topography, location, or surroundings. The average parcel size in the surrounding neighborhood is 6,600 square feet, while the subject parcel is 6,211 square feet. Both measures are consistent with SMC standards for the R-0 Zone which specifies 6,000 square feet minimum parcel sizes. The average parcel width is 65 feet in the neighborhood and the subject parcel is 66 feet wide. SMC requires at least 62 feet for corner lots in the R-0 Zone. The site is rectangular and has no topographical features. Therefore, the parcel's shape, size, or topography does not deprive the property owner of a privilege enjoyed by similar property owners.

In addition, staff does not find that there are any physical hardships on this property that would allow this finding to be made. This includes the grade change, which is a common situation in Sunnyvale. Staff also does not find the sewer lateral issue to be a unique circumstance or condition that applies only to this property, since it is not an uncommon situation, although it does create a more expensive project for the applicant.

Staff is able to make the second Variance finding that granting the application will not be materially detrimental to the public welfare. Staff believes the addition will not negatively impact the neighborhood in any measurable sense.

Staff cannot make the third finding that granting the Variance will not grant a special privilege not enjoyed by other surrounding property owners. Approving this request would allow a significant majority of the homes in the neighborhood to make the same findings for reducing the front yard setback, due to similar parcel sizes, lot width, and siting of homes.

There are some residences in the area that do not conform to current SMC setbacks. Most of these nonconforming setbacks were created when the homes were initially constructed in the early 1960's. The applicant refers to several of these in their letter of justification and photos, but these non-conforming setbacks are a part of the original building permit in accordance with the Municipal Code at that time. The following table shows all Variance applications submitted to the City in the neighborhood. All of the following were approved.

Property Address	Date	Variance Description
721 Ashbourne	1/13/2003	Encroachment of single-story addition into 40-foot vision triangle.
666 Ashbourne	6/16/1982	Exceed allowable lot coverage
717 Ashbourne	9/1/1973	Interior Side yard setback (5' second story where 7' was required)
1342 Flicker	7/16/1980	Side yard setback
1390 Flicker	1/13/1975	Exceed allowable lot coverage 39% where 35% was max allowed)

Findings: Staff is recommending denial for this application because the Findings (Attachment A) were not made. However, if the City Council is able to make the required findings, staff is recommending the Conditions of Approval (Attachment B) for the project be attached to the approval.

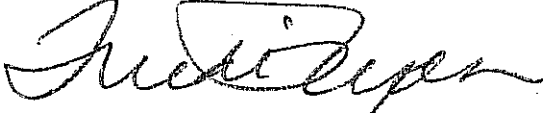
Alternatives

1. Deny the appeal and uphold the decision to deny the Variance.
2. Grant the appeal and approve the Variance with attached conditions.
3. Grant the appeal and approve the Variance with modified conditions.

Recommendation

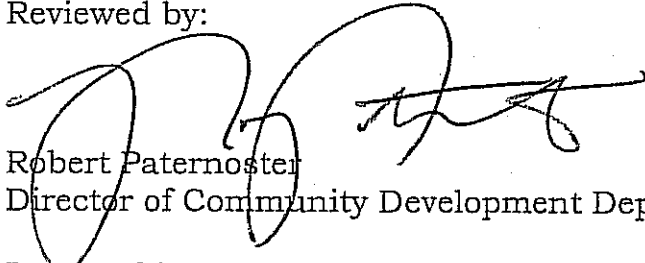
Recommend Alternative 1.

Reviewed by:



Trudi Ryan, Planning Officer

Reviewed by:



Robert Paternoster
Director of Community Development Department

Prepared by: Steve Lynch, Project Planner

Approved by:



Amy Chan
City Manager

Attachments:

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Applicant Letter of Justification
- D. Assessor Parcel Map
- E. Site and Architectural Plans
- F. Draft Administrative Hearing meeting minutes from March 2, 2006
- G. Draft Planning Commission meeting minutes from April 10, 2006
- H. Draft Planning Commission meeting minutes from April 24, 2006
- I. Additional information submitted by the applicant.

Recommended Findings - Variance

1. Because of exceptional or extraordinary circumstances or conditions applicable to the property, or use, including size, shape, topography, location or surroundings, the strict application of the ordinance is found to deprive the property owner or privileges enjoyed by other properties in the vicinity and within the same zoning district.

Staff is not able to make this finding because the site meets all lot dimensional standards for the R-0 Zoning district. The parcel is a standard shape and has no distinguishing topographical features.

The applicant has not demonstrated that extraordinary circumstances apply to this site or that the use would deprive him of a privilege enjoyed by others. Staff was not able to make this finding based upon the above discussion about the parcel configuration. Therefore, staff does not find that the strict application of the ordinance is found to deprive the property owner or privileges enjoyed by other properties in the vicinity.

2. The granting of the Variance will not be materially detrimental to the public welfare or injurious to the property, improvements, or uses within the immediate vicinity and within the same zoning district.

Staff is able to make this finding because approving this request would not be detrimental to the neighborhood.

3. Upon granting of the Variance, the intent and purpose of the ordinance will still be served and the recipient of the Variance will not be granted special privileges not enjoyed by other surrounding property owners within the same zoning district.

Staff is not able to make this finding because approving this request would grant a setback not enjoyed by other properties in the vicinity and may also allow a significant majority of the homes in the neighborhood to make the same findings for expansion of the home, due to similar parcel sizes, garage sizes, home sizes, and siting of homes.

Recommended Conditions of Approval if the Variance is Granted.

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following conditions of approval of this Permit:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

1. GENERAL CONDITIONS

- A. The Variance shall be null and void two years from the date of approval by the final review authority if the approval is not exercised.
- B. Project shall be in conformance with the plans approved at the public hearing. Minor changes may be approved by the Director of Community Development; major changes may be approved at a public hearing.
- C. The Conditions of Approval shall be reproduced on the cover page of the plans submitted for a Building permit for this project.
- D. Obtain building permits for the proposed plan.

2. DESIGN/EXTERIOR COLORS AND MATERIALS

- A. Final exterior building materials and color scheme are subject to review and approval by the Director of Community Development prior to issuance of a building permit.
- B. Roof material shall match the existing home or if replaced entirely, be 50-year dimensional composition shingle or equivalent warranty material providing texture and shadow effect, or as approved by the Director of Community Development.

VARIANCE JUSTIFICATIONS

Justifications must be submitted by the applicant with all Variance applications. Use this sheet or a separate sheet of paper to complete all of the three statements below.

In granting a Variance, all of the following justifications must be made by the Planning Commission or the Administrative Hearing Officer:

19.84.050. Findings.

(a) A Variance from the requirements of this title, except for the height of a ground sign, shall be approved only upon a showing by the applicant that:

1. Because of exceptional or extraordinary circumstances or conditions applicable to the property, or use, including size, shape, topography, location or surroundings, the strict application of the ordinance is found to deprive the property owner of privileges enjoyed by other properties in the vicinity and within the same zoning district.

The property is a corner lot on Ashbourne and Flicker and the accompanying photos will show that other property owners on this street have completed remodels that also reveal a 6 foot side yard setback. Granting this variance would allow the home owners to enjoy the same privilege of expansion as their neighbors, allowing the same overall square footage consistent with the neighborhood.

2. The granting of the Variance will not be materially detrimental to the public welfare or injurious to the property, improvements or uses within the immediate vicinity and within the same zoning district.

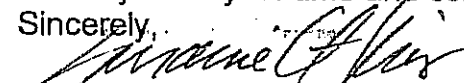
Granting this variance would not be detrimental to the public welfare or property since the vision triangle for traffic is maintained and the exterior look of the addition will match the existing house and the general ranch look of the existing neighborhood. This does not inhibit the use or enjoyment of any home in the immediately zoned area.

3. Upon granting of the Variance the intent and purpose of the ordinance will still be served and the recipient of the Variance will not be granted special privileges not enjoyed by other surrounding property owners within the same zoning district.

We do not believe there are any special privileges being granted, but instead the home owners enjoyment and use of the property will be brought up to par with their neighbors.

Thank you for your time and consideration in this matter.

Sincerely,



Lorraine Riess (for Tony Maciejowski and Lorraine Guerrero, owners)
Professional, AIBD

If you need assistance in answering any of these justifications, contact the Planning Division staff at the One Stop Permit Center.

734 Ashbourne Drive
Sunnyvale, CA 94087
March 8, 2006

Planning Commission
Dept. of Community Development
456 West Olive Ave.
Sunnyvale, CA 94088

To whom it may concern,

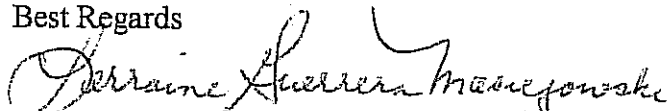
We are requesting a variance from Sunnyvale Municipal code section 19.34.040 to allow a six-foot set back where nine feet is required from the property line on a corner lot. The addition would have a setback of 17 feet from the face of the curb instead of 20 feet.

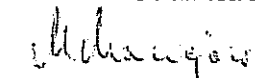
Some of the corner lots in the neighborhood do not meet the current set back requirements and this request for a variance would match the set backs of other corner lots in the neighborhood. Granting a variance would not set a precedence for a majority of homes. Therefore, the cumulative effect of structures closer to the street would not have a negative impact on the streetscape and would not reduce the visual open space in the area.

In addition, the exceptional topography of the parcel is causing a hardship in designing the placement of the sewer line for our new bathroom. The elevation of the home on the Flicker Way side of the parcel is approximately 4 feet higher than the street. This situation is depriving us of a privilege enjoyed by similar property owners, since surrounding parcels are at street level and 734 Ashbourne/Flicker is not.

The Sunnyvale planning staff has noted in the documents prepared at the administrative hearing that the proposed addition would have a minimal impact to the surrounding neighborhood. It was stated at the meeting that the design of the addition was done very well to blend in and complement the existing home. Therefore, we are asking that the variance be granted.

Best Regards


Lorraine Guerrera Maciejowski

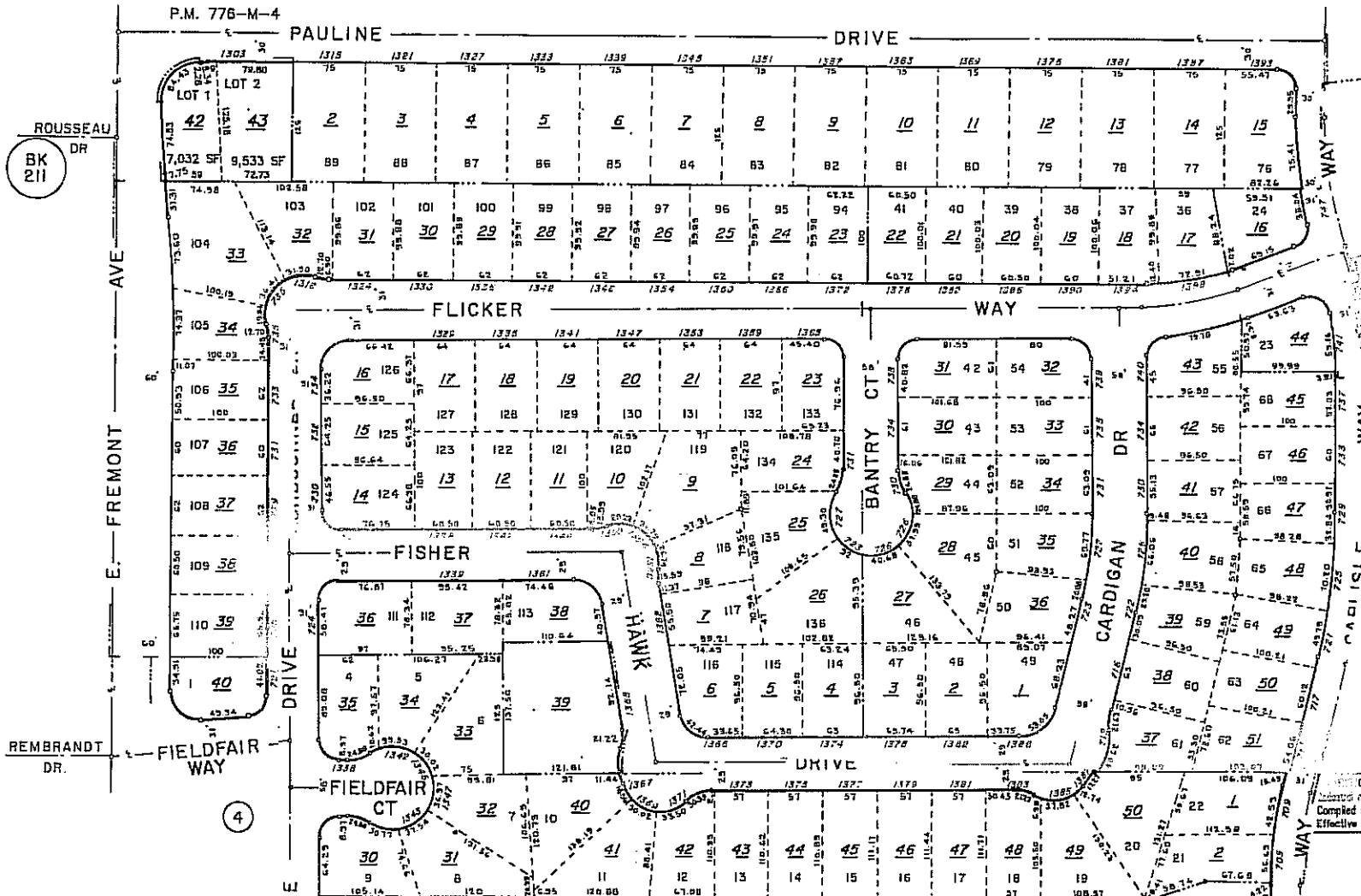
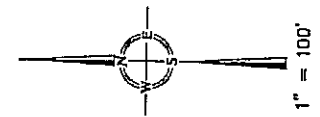

M.A. Maciejowski

OFFICE OF COUNTY ASSESSOR — SANTA CLARA COUNTY, CALIFORNIA

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BOOK 309 PAGE 7

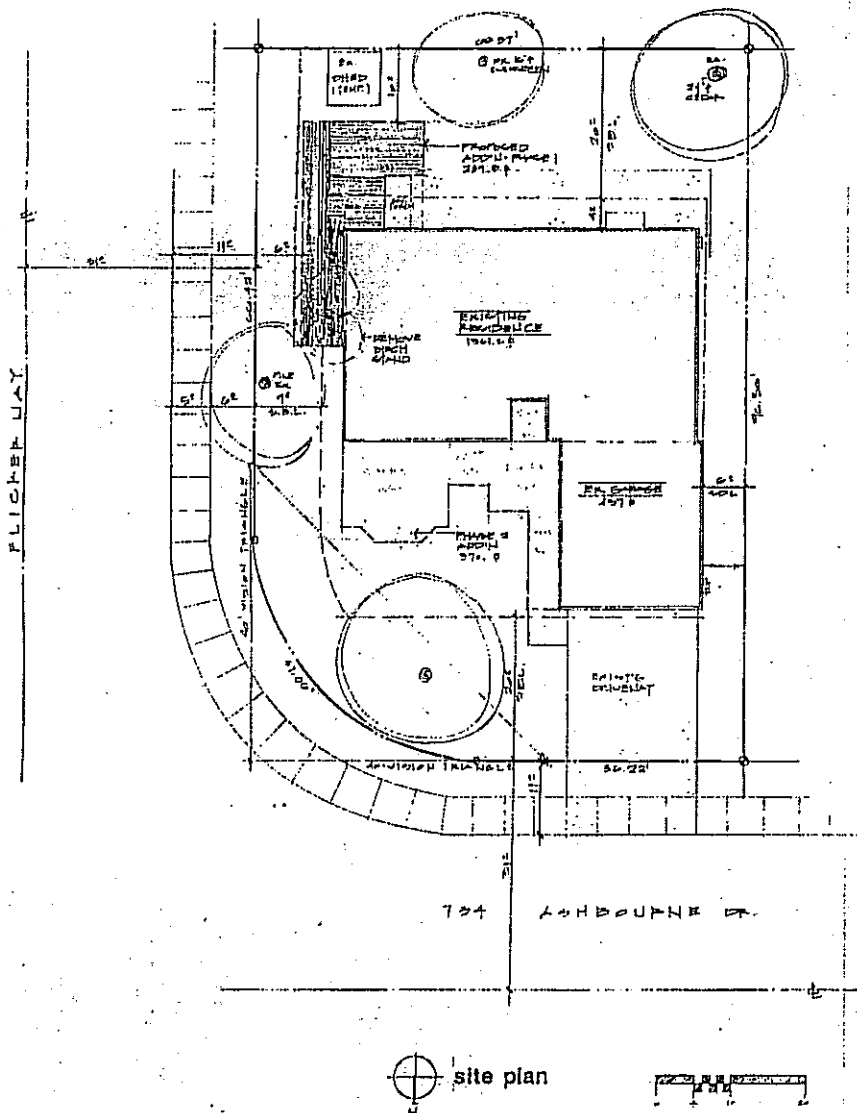
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FREMONT MANOR ADDITION N° 2



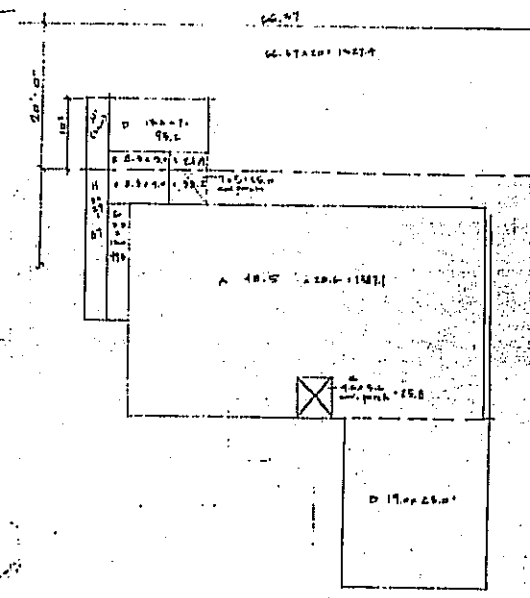
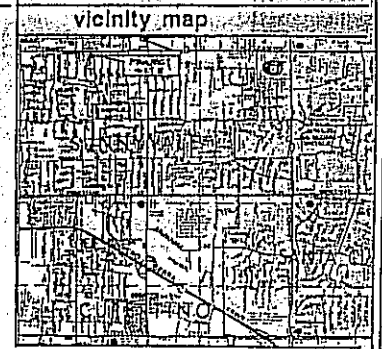
TRACT N° 3181
GREENTREE
UNIT N° 1

DE E. STONE - ASSESSOR
Map for assessment purposes only
Compiled under R. & T. Code, Sec. 2271
Effective Roll Year 2005-2006

ATTACHMENT
Page 1



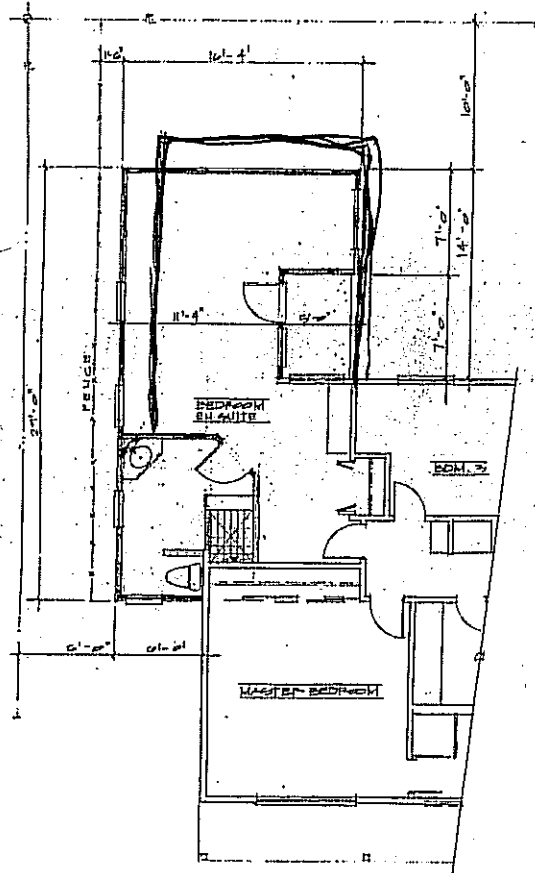
tabulations	property description
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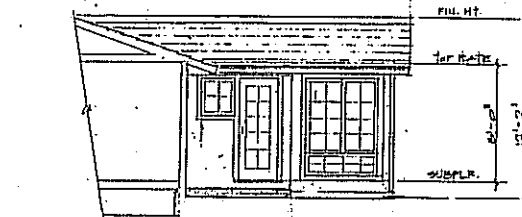
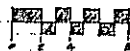
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ATTACHMENT 1
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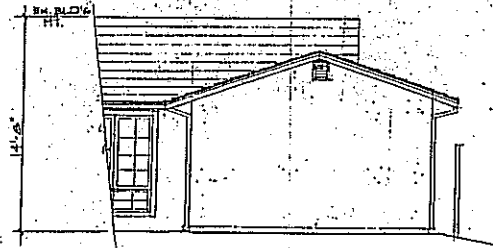
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proposed floor plan

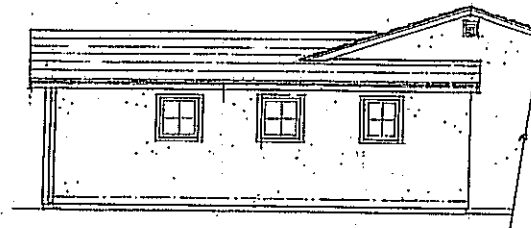


west elevation



south elevation

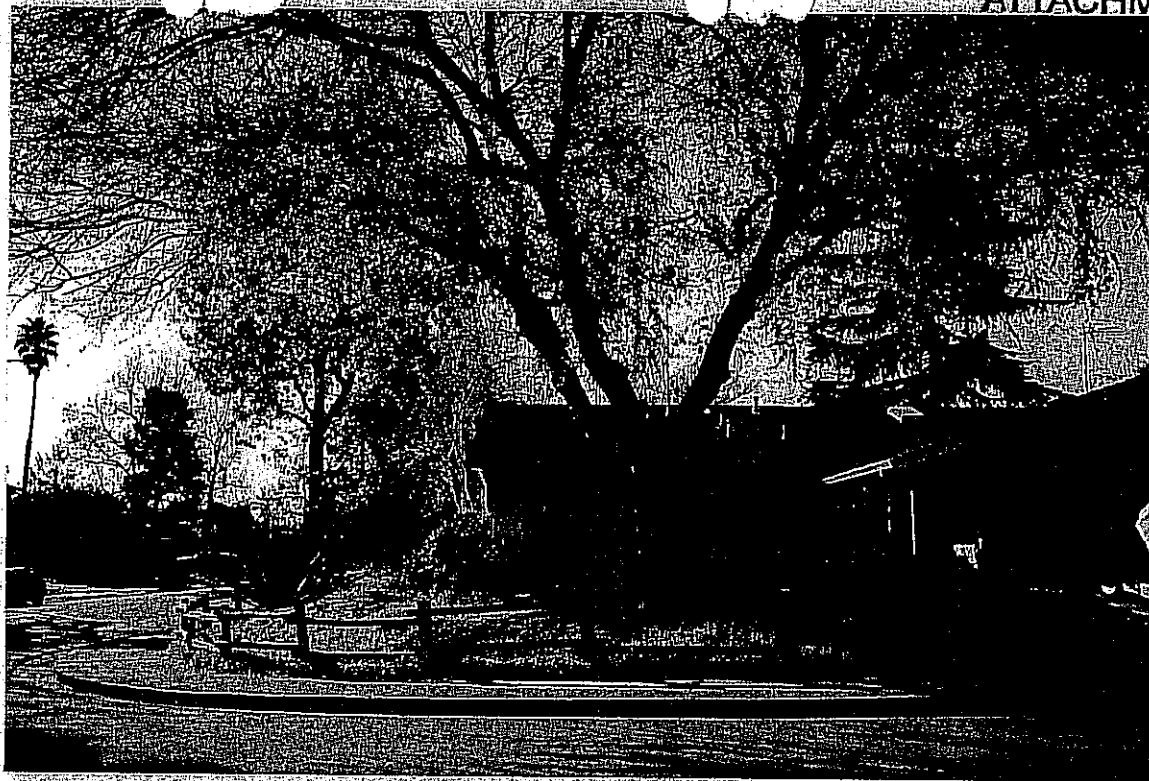
FINISH MATERIALS
 ROOFING - SHINGLE
 S.F. 4TH. SHADOW GRAY
 S. MATCH EXISTING
 FENCE - CLEAR HEART
 REDUCED TO MATCH EXIST.
 BRICKWORK - S.S.
 WHITE
 SIDING - SHINGLES
 FRONT WHITE - RM-14
 TO MATCH EXISTING
 TRIM - S.S.4 HOLDING
 WHITE SHADOW GRAY
 TO MATCH EXISTING
 WINDOWS - ANDERSON
 SLIDERS W/SHDS - WHITE
 TO MATCH EXISTING



east elevation

ATTACHMENT 4
 Page 5 of 6

REVISIONS	BY
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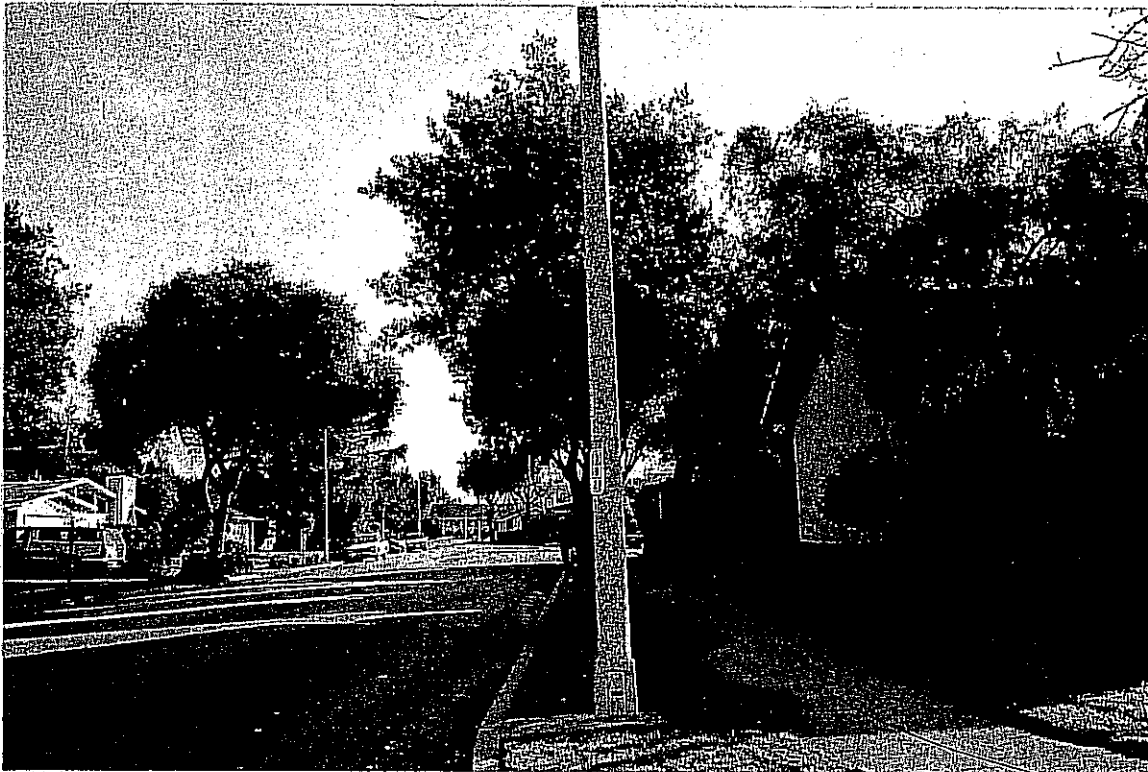
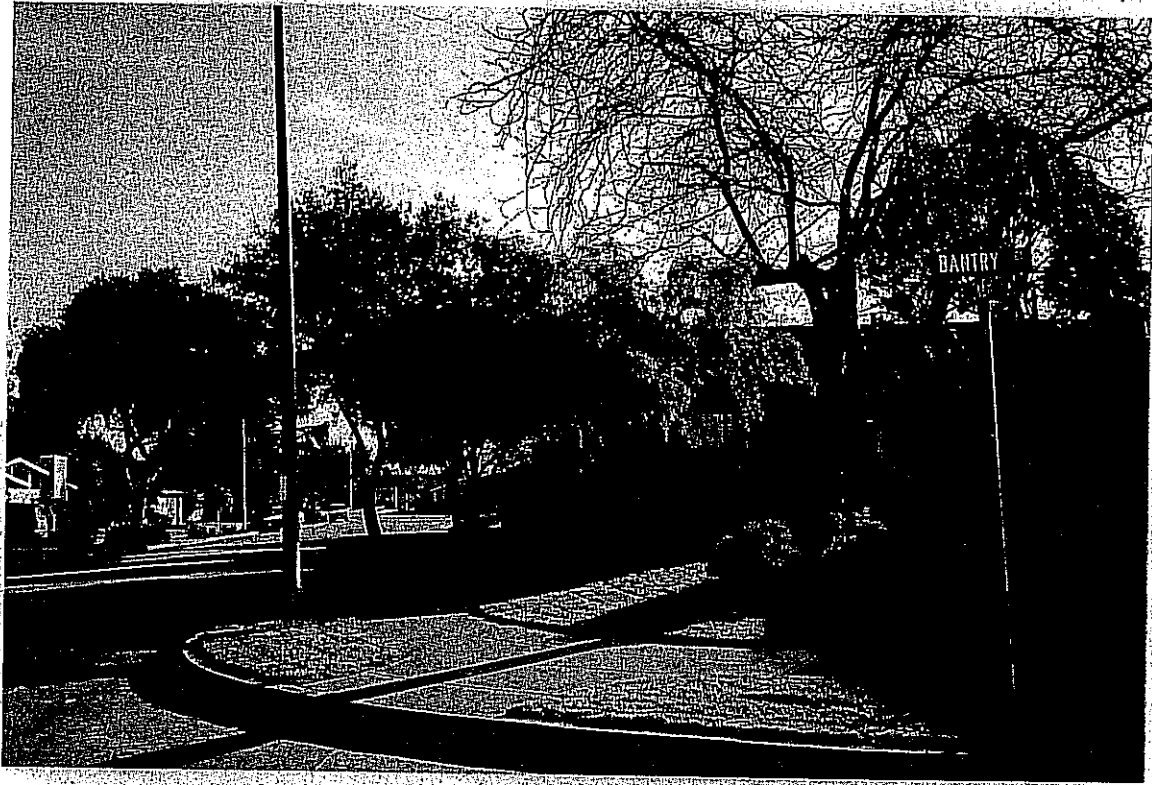


FRONT VIEW



SIDE VIEW (FLICKER WAY)







**CITY OF SUNNYVALE
ADMINISTRATIVE HEARING**

ATTACHMENT F
Page 1 of 2

**MINUTES
Thursday, March 2, 2006**

2006-0087 – Application for a Variance on a 6,211 square-foot site from Sunnyvale Municipal Code section 19.34.040 to allow a six-foot setback where nine feet is required. The property is located at **734 Ashbourne Dr** (near E Fremont Ave) in an R-0 (Low-Density Residential) Zoning District. (APN: 309-06-016)

In attendance: Lorraine Guerrero, Applicant; Robert Harms, Neighbor; Andrew Miner, Administrative Hearing Officer; Steve Lynch, Project Planner; Luis Uribe, Staff Office Assistant.

Mr. Andrew Miner, Administrative Hearing Officer, on behalf of the Director of Community Development, explained the format that would be observed during the public hearing.

Mr. Miner announced the subject application.

Steve Lynch, Project Planner, stated that the applicant is proposing an addition of 290 square feet to an existing 1,798 square foot single-story residence. The addition is proposed in the rear and reducible front yard areas, and the house will total 2,088 square feet when completed. The scope of the project is to expand one of three bedrooms into a mater suite. The proposed home will have three bedrooms, family room, living room, kitchen, and a two-car garage.

As part of the project, the applicant is requesting that a portion of the new addition be constructed six feet from the property line, where nine feet is the minimum allowed by Sunnyvale Municipal Code (SMC). This street side yard is considered a front yard area and requires a 20-foot setback but is allowed to be reduced under SMC 19.34.040 to a minimum of nine feet. Staff could not make 2 of the 3 Findings. Therefore staff does not recommend approval.

Mr. Miner opened the public hearing.

Lorraine Guerrero, Applicant, received and reviewed a copy of the staff report. The applicant gave a brief statement on other properties in the neighborhood that have constructed a similar addition. Ms. Guerrero noted that the reason for this addition is to accommodate a handicapped person.

Mr. Miner stated that in order to pass a variance the project has to meet certain Findings. Mr. Miner asked the applicant if there was something unusual about the property that would prohibit the addition meeting the required set-back. The applicant stated that the addition is to help accommodate a person with special needs.

2006-0087 734 Ashbourne Dr.

Administrative Hearing

March 2, 2006

Page 2 of 2

Robert Harms, Neighbor, stated that the corner lot is a hazard as far as the field of view is concerned.

Lorraine Riess, Designer, stated that Mr. Harms statements were related more to parking issues.

Mr. Miner closed the public hearing.

Mr. Miner denied the application due to the inability to meet the Findings.

Mr. Miner stated that the decision is final unless appealed to the Planning Commission with payment of the appeal fee within the 15-day appeal period.

The meeting was adjourned at 2:34 p.m.

Minutes approved by:



Andrew Miner, Principal Planner

PLANNING COMMISSION MINUTES OF APRIL 10, 2006

2006-0087 – Appeal of a decision of the Administrative Hearing Officer for an application for a Variance on a 6,211 square-foot site from Sunnyvale Municipal Code section 19.34.040 to allow a six-foot setback where nine feet is required. The property is located at **734 Ashbourne Dr** (near E Fremont Ave) in an R-0 (Low-Density Residential) Zoning District. (APN: 309-06-016) SL

Gerri Caruso, Principal Planner, presented the staff report. Ms. Caruso said that staff is unable to make the findings to approve the requested variance and is recommending the Planning Commission uphold the decision of the Administrative Hearing Officer and deny the variance.

Chair Hungerford opened the public hearing.

Lorraine Guerrera Maciejowski, appellant, said the proposed plans are for an addition that would have a setback of 17 feet from the face of the curb instead of 20 feet. Ms. Maciejowski said she spoke with Teresa Zarrin, Associate Planner in the Planning Division and that she indicated that the home is zoned R-0 (Residential Low Density) requiring only an 8 foot setback. Ms. Maciejowski asked staff for clarification on what the setback requirement is. She commented that some of the corner lots in the neighborhood do not meet the setback requirements and this request for a variance would actually match some of the other corner lots. She said the proposed new addition would be built on the side and rear of the home and would be almost hidden due to a fence and landscaping. Ms. Maciejowski shared three pictures of other corner lots in the neighborhood that do not meet the setback requirements as the variances were "grandfathered in." She said the addition would not have a negative impact on the streetscape and would not affect the visual open space in the area. She also provided letters from two neighbors expressing support for the project. She shared a picture of a nearby house that is similar to the fence and landscaping that they plan to provide. She said that Andrew Miner, the Administrative Hearing officer, said at the Administrative Hearing that the design of the plan blended in and complimented the home. She said this addition is to accommodate the need to make extra room for a person in the home who has limited mobility.

Mieczyslaw Maciejowski, appellant, mentioned a few things regarding the topography of the property. He said their site is a corner lot and that there are a couple of storm drains that make the corner spot lower. He said their home is about five feet above the low spot and a few years ago they had FEMA survey the property so they could request an exemption from the flood insurance as their house is higher than the flood level. He said because of this elevation there may be an issue in getting the sewer line hooked up. Mr. Maciejowski said if this

variance is not approved it may be difficult and expensive to redesign the project and sewer line hook up and that the project may no longer be economically feasible.

Comm. Babcock referred to Ms. Maciejowski statement regarding a fence that would screen the building and asked staff what the setback would be for a fence. Ms. Ryan said a six foot tall fence may be placed on the property line, a seven foot tall fence could be placed on the property line with proper noticing to the neighbors that this has been proposed and any fence taller than seven feet would require a Use Permit that would go to Administrative Hearing. Comm. Babcock asked where the fence would be in relation to the addition. Ms. Ryan said she does not think a specific application for a fence has been submitted. Ms. Caruso said the setback of 6 feet would be measured from the property line the fence could be on property line so the fence could feasibly be six feet from the addition if approved.

Comm. Sulser commented to staff about the grade differential on the site and that the differential is part of the appellant's justification for requesting the variance. He asked staff how common it is for there to be grade differentials for sites in Sunnyvale. Ms. Ryan said Sunnyvale is primarily flat, but that it is not unusual for the houses to be graded up from the streets and sidewalks, especially on corner lots.

Comm. Klein asked staff if the grade differential makes this site special in any way. Ms. Caruso said the difference in elevation does not effect the variance or the ability to do the addition.

Chair Hungerford referred to Ms. Maciejowski request for clarification on the setback requirement and asked staff to respond. Ms. Ryan said without being present during the conversation she could only guess that possibly the Planner was not clear that the setback in question was referring to the street side of the property. Ms. Ryan confirmed that the required setback in question is a 9 foot minimum. Ms. Ryan explained how the setbacks are defined for corner lot properties.

Ms. Maciejowski said she felt that Ms. Zarrin was quite clear the zoning was R-0 and 8 feet. The appellant provided a photo for the Commissioners to view and said the fence is 11 feet 3 inches from the face of the curb. She also said she feels like the site has a unique grade and that it would be a financial hardship to redesign the sewer line and home in a different location. She said that the fence and landscaping would be similar to the neighbor's fence and landscaping. She thanked the Planning Commission for their consideration.

Chair Hungerford closed the public hearing.

Ms. Ryan commented that staff was not aware of any of the concerns that the appellant addressed regarding a sewer connection. She said if the Planning Commission thinks this needs to be considered, the item could be continued to allow time for staff to review the concern.

Comm. Babcock moved that this item be continued for two weeks to allow staff time to check into the sewer difficulties mentioned by the applicant. Comm. Klein seconded.

Comm. Babcock said that a variance is very difficult to approve. She said based on the information she has seen tonight that she cannot make the findings, but rather than deny the appeal she would like to see what staff finds out regarding the possible hardship in order to get a sewer connection for the property.

Chair Hungerford said that he will be supporting the motion and that he agrees with Comm. Babcock. He said he does not see the information to approve the variance, but the issue about the sewer connection warrants exploring.

Final Action:

Comm. Babcock made a motion on 2006-0087 to continue the item to April 24, 2006 to allow staff time to assess the sewer situation related to this property. Comm. Klein seconded.

Motion carried unanimously, 5-0, Comm. Simons absent.

This item is continued to the April 24, 2006 Planning Commission meeting.

PLANNING COMMISSION MINUTES OF APRIL 24, 2006

2006-0087 – Appeal of a decision of the Administrative Hearing Officer for an application for a Variance on a 6,211 square-foot site from Sunnyvale Municipal Code section 19.34.040 to allow a six-foot setback where nine feet is required. The property is located at **734 Ashbourne Dr** (near E Fremont Ave) in an R-0 (Low-Density Residential) Zoning District. (APN: 309-06-016) SL (**Continued from April 10, 2006**)

Steve Lynch, Associate Planner, presented the staff report. He said this item was continued from the April 10, 2006 meeting to have staff further research issues related to the flood zone and the sewer connection of the site. Staff requested that the applicant provide an estimate of the project cost difference depending on where the bathroom is located to determine if a change in the design would result in a more expensive sewer line connection that might be a financial hardship to the property owner.

Chair Hungerford asked staff if the applicant was able to provide the financial impact of a new connection. Mr. Lynch said the applicant provided this information to Planning staff and the Commissioners this evening and asked that the applicant discuss the information during the applicant presentation.

Chair Hungerford opened the public hearing.

Lorraine Guerrera Maciejowski, applicant, thanked the Planning Commission for the opportunity to clarify a few issues from the April 10, 2006 meeting. She summarized what had been reviewed. Ms. Maciejowski said that a staff member had complimented their design at the Administrative Hearing and that letters of approval from neighbors were provided. She said other areas discussed were the fence and landscaping, topography and grading of the site. She said that she feels the site shows "extraordinary topography" which is one of the findings for a variance. She said that the definition of extraordinary is "uncommon and unusual" and that she feels their site meets the definition. She also referenced the Americans with Disabilities Act (ADA) guidelines for design requirements for bathrooms, submitted a design that would meet the requirements and discussed some of the requirements. She said they need to remodel the bathroom to be ADA compliant to accommodate a relative living with them. She said, regarding the waste collection issue, that they consulted a California licensed building contractor and plumber and that her husband would report on the findings.

Mieczyslaw Maciejowski, applicant, reported the findings and provided a written statement from the contractor regarding the sewer connection. He described some of the findings, why they chose the proposed design for the addition, and some of the problems that would result if they had to redesign the addition

extending to the rear of the house rather than the side, taking into consideration the recently landscaped backyard. He said if a sewer connection had to be added on the Flicker Way side that the contractor estimated the project would cost an extra \$20,000 and be disruptive to the neighborhood while putting in the new line. Mr. Maciejowski said he believes the most convenient design for the addition is the one proposed on the side of house that could be tied into the existing street sewer lines. He said he feels they have provided the necessary information for the variance so that the remodel will be both economically feasible and visually pleasing for the neighborhood.

Comm. Sulser asked Mr. Maciejowski how much the sewer hook up would cost if a variance were granted. Mr. Maciejowski said he is not sure what the cost would be to hook up to the existing sewer line, but if a separate sewer line is required, it will cost about \$20,000 more including the disruption of sidewalks and streets while the new sewer line is being installed.

Comm. Babcock asked Mr. Maciejowski if they had considered extending the bedroom into the backyard and putting the bathroom on the east side of the home which would not require a variance. He said if they extended the bedroom to the rear of the house they would lose one of the dual paned windows and part of the useable backyard space. He said they could consider narrowing the addition in order to meet the setbacks, but it would not be practical and would not accommodate the size needed for the bathroom for a person with limited mobility.

Chair Hungerford closed the public hearing.

Trudi Ryan, Planning Officer, commented that the City Attorney advises that the ADA laws look for reasonable accommodation for facilities for those with disabilities which could be used as a reason, if the Planning Commission chooses, to approve the variance. Ms. Ryan said if the Commission determines that an additional sewer connection is a hardship that this hardship could also be an appropriate reason to approve the variance along with the ADA component.

Chair Hungerford commented to Ms. Ryan that he thought the Planning Commission was to consider the property configuration only when considering a variance and not at the applicant. Ms. Ryan said the code regulates that to grant a variance that something has to be unique about the "property or the use." She said, in this case, the use could be the ADA compliant bathroom.

Comm. Babcock moved for Alternative 1, to deny the appeal and uphold the decision to deny the Variance. **Comm. Simons** seconded the motion.

Comm. Babcock said she was unable to make the findings and that she feels there are alternative designs for the addition that can be considered using part of the backyard rather than the side yard.

Comm. Simons said he thinks that adding a secondary sewer line seems unnecessary and that there are alternatives that would be less expensive than \$20,000.

Final Action:

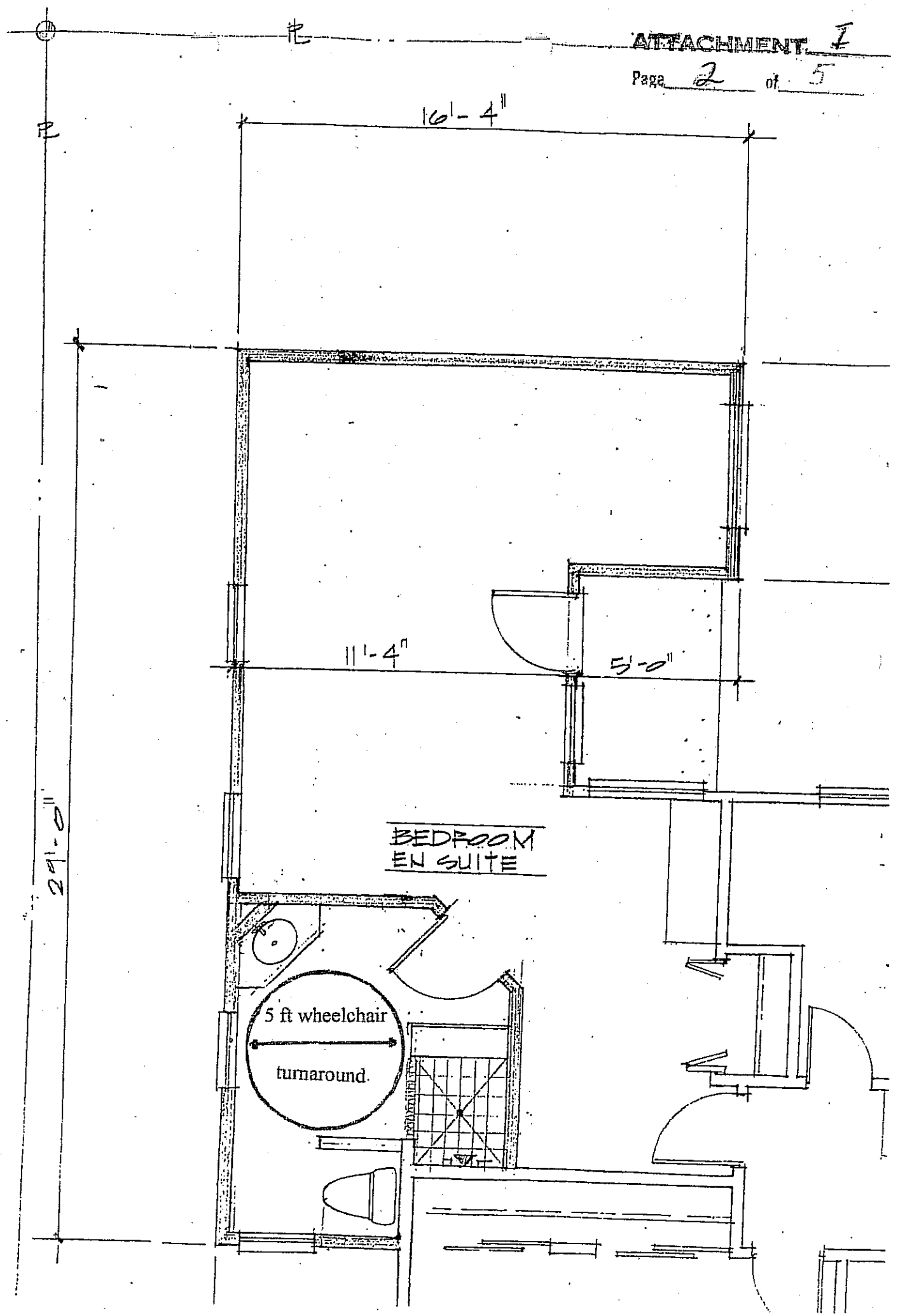
Comm. Babcock made a motion on 2006-0087 to deny the appeal and uphold the decision of the Administrative Hearing Officer to deny the Variance. **Comm. Simons** seconded.

Motion carried unanimously, 5-0, Vice Chair Fussell absent.

This item is appealable to City Council no later than May 9, 2006

ADA compliant bathroom

1. Entry doors should be a minimum of **36 inches** to accommodate a wheelchair.
2. Wheelchair turnaround should be 5ft in diameter
3. Inside dimensions of the inside of the **shower** must be at least **36 x36** inches , with a curb no higher than $\frac{1}{2}$ inch.
Grab bars for support and ADA lever type handles are required.
If a fold down chair is used, handles needs to be within easy reach of the on/off valves. The shower head should be an adjustable height type.
4. The space in front of the toilet should be **36 inches**. The toilet can be set into a **36 inch** space with grab bars and needs to be **3.5 inches higher** than a normal toilet with an elongated style.
5. The sink and vanity needs to be lower than a standard sink with an open access so that a wheelchair can easily roll under the counter. Plumbing pipes need to be covered to avoid heat burns and the sink should have ADA approved lever knobs.



WOODSTOCK BUILDERS
General Building Contractor
798 Vista Grande Avenue
Los Altos, CA 94024
(650) 966-1344
California State License No. 555991

20 April 2006

Mr. Tony Maciejowski

Subject: 734 Ashborne Avenue
Sunnyvale, CA 94087

Dear Mr. Maciejowski:

After performing a site review of your subject residence, it is in my professional opinion, along with that of a California licensed plumber, that additional bathroom should be located on the Flicker Way side of your residence for the following reasons:

- The existing underfloor grade conditions allow for a clean tie-in to the existing four inch sewer line;
- The underfloor framing will not be disturbed;
- Access to the sewer clean outs will be easily available; and
- Disturbance of exterior grade changes will be kept to a minimum

Regarding the alternate proposal of adding a bathroom to the rear of your residence, the necessary grade to achieve proper sewage flow will be difficult because:

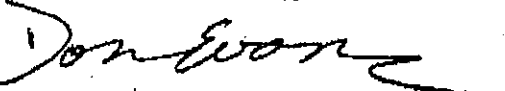
- Existing underfloor framing removal could cause structural issues;
- Given the distance from the front to the back of the house and the depth necessary to tie into the existing sewer could damage the existing line located in the front yard

In closing, the possibility of adding a new sewer tie-in to the Flicker Way side of your residence would be cost prohibitive in an amount exceeding \$20,000 along with disruption to your neighbors and city traffic.

If I can be of further assistance to you regarding this matter, please do not hesitate to contact me. I can be reached at the letterhead address and by telephone at (650) 966-1344.

Thank you and best regards,

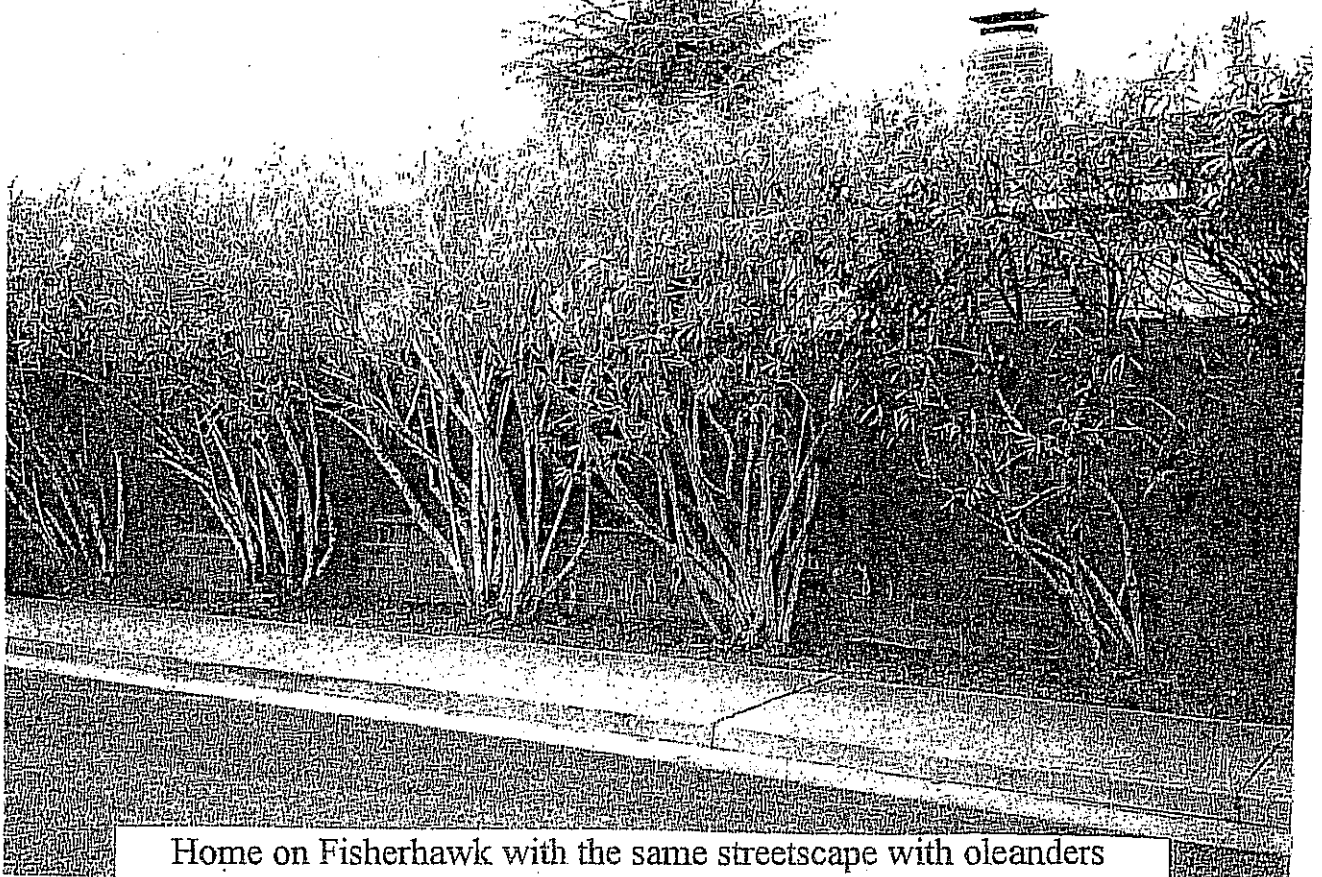
WOODSTOCK BUILDERS



Don E Evans
Owner



Proposed fence at 734 Ashbourne on the Flicker side



Home on Fisherhawk with the same streetscape with oleanders that is planned for Ashbourne Drive.



DRAFT MINUTES*
SUNNYVALE CITY COUNCIL
Tuesday, July 18, 2006

The City Council of the City of Sunnyvale adjourned from a 5:30 p.m. Closed Session pertaining to: Conference with Legal Counsel, Existing Litigation. Government Code Section 54865.9(a), Thompson-Pacific Construction Inc. v. City of Sunnyvale, Appellate Case No. H029818 and Conference With Legal Counsel - Anticipated Litigation. Government Code Section 54956.9, Significant Exposure to Litigation, 1 potential case and a 6:00 p.m. Special Study Session pertaining to: Update of Fiscal Sub-Element and met in Regular Session in the City Council Chambers, 456 West Olive Avenue, Sunnyvale, California at 7:00 p.m., with Mayor Swegles presiding.

SALUTE TO THE FLAG

Mayor Swegles led the salute to the flag.

ROLL CALL

PRESENT:

Mayor Ron Swegles
Vice Mayor Otto Lee
Councilmember John Howe
Councilmember Dean J. Chu
Councilmember Melinda Hamilton
Councilmember Anthony Spitaleri
Councilmember Christopher Moylan

ABSENT:

None

STAFF PRESENT:

Amy Chan, City Manager
David Kahn, City Attorney
Robert Paternoster, Director of Community Development
Elaine Wesely, Finance Manager - Purchasing
Curtis Black, Superintendent of Parks
Connie Verceles, Senior Management Analyst
Tim Kirby, Revenue Systems Supervisor
Marvin Rose, Director of Public Works
Christy Gunvalsen, Neighborhood Preservation Manager
Trudi Ryan, Planning Officer
Mark Bowers, Solid Waste Program Manager
Katherine Bradshaw Chapple, City Clerk

PUBLIC HEARINGS/GENERAL BUSINESS

7. **RTC 06-223 & Attachments A - E Attachments F - I** **Appeal of a decision of the Planning Commission for an application for a Variance on a 6,211 square-foot site from Sunnyvale Municipal Code Section 19.34.040 to allow a six-foot setback where nine feet is required. Property located at 734 Ashbourne Drive (near E. Fremont Avenue) in R-O (Low-Density Residential) Zoning District**

Trudi Ryan, Planning Officer, presented the staff report.

Mayor Swegles opened the Public Hearing at 9:10 p.m.

Lorraine Guerrera Maciejowsk, appellant, presented the reasons for her appeal and the need to have American Disabilities Act (ADA) compliance in her home due to an elderly parent living in the home. Ms. Maciejowsk stated they need to add a bedroom and bathroom large enough for wheelchair turn-around.

Jerome Galli, attorney for the appellant, presented support for the appeal. He stated that ADA requirements apply to the zoning code.

Councilmember Hamilton asked the appellant if alternative plans were considered. Ms. Maciejowsk stated they did consider other plans, but for one reason or another they would not work.

Mayor Swegles stated the Planning Commission supported adding on to the back of the house and asked why this would not be an option. Ms. Maciejowsk stated it would be a more expensive project and the addition would be 87-square feet smaller than the proposed project, which would not allow for the wheel chair turn-around.

No one else wished to speak and Mayor Swegles closed the Public Hearing at 9:28 p.m.

Vice Mayor Lee asked how the ADA requirement affects City code. David Kahn, City Attorney, noted that the ADA compliance issue was not raised by the appellant at the first Planning Commission meeting for this application, but it was raised at subsequent meetings. City Attorney Kahn explained that ADA is a federal law and one of the requirements of the ADA is reasonable accommodation. He stated that ADA reasonable accommodation can require adjustments to a zoning code (if the zoning code does not allow for reasonable use of the property for someone who qualifies under the ADA). ADA reasonable accommodation does not require a Variance if there are other reasonable alternatives available that would not cause an undue hardship. Vice Mayor Lee verified that a Variance is permanent for that property.

Councilmember Howe stated he is aware of a Variance that was granted for the addition of a second kitchen to a property, and at the time of sale, removal of the kitchen would be required. City Attorney Kahn stated that a second kitchen does not require a foundation and structure to be built; rather it was added within an existing structure. He stated that granting a Variance would be permanent in this case.

Councilmember Spitaleri confirmed that staff's recommendation is based on the belief that there are other ADA design alternatives available that do not require a Variance and in staff's opinion these alternatives would not create a hardship any different than when other property owners add a bathroom.

Amy Chan, City Manager, stated the Planning Commission understood the flexibility of their decision as they were told by the Assistant City Attorney that

they can take ADA into consideration if they found that reasonable accommodation was needed. Staff findings were that there are other plan alternatives and they have not been able to make the finding that reasonable accommodation is needed. Council would need to identify if the alternatives would cause undue hardship and if so, they may want to support the ADA law and grant the Variance.

City Attorney Kahn stated when this was brought before the Planning Commission for a Variance, the emphasis was not on the ADA compliance or reasonable accommodation; it was based on property issues. Therefore, the issue before Council is whether there are other alternative configurations that would effectively accomplish the same result. He stated it would be important for Council to clarify the cost of any alternatives before making their decision. When considering if alternatives would create undue hardships, Council should look at the overall value of the project, the cost of the project, and what percentage of that project the addition would cost.

Councilmember Chu confirmed that an alternative design incorporating the size of the room and bathroom as listed on the original plan could be designed without affecting the set back.

Vice Mayor Lee asked that the Public Hearing be reopened so that he may ask the applicant what the difference in cost would be for the alternative.

Mayor Swegles reopened the Public Hearing.

Mr. Maciejowski stated they do not have bids from contractors because they do not have definite construction plans. The costs submitted were for plumbing work only. Mayor Swegles confirmed that the cost for plumbing work to enlarge the house at the back (as an alternative that would comply with current zoning) would be an additional \$1,500.

Mayor Swegles confirmed that the appellant is requesting a bedroom and a bathroom and that without a Variance; they believe a bathroom is all that they would be able to add to the house.

Officer Ryan requested a recess in order to confer with the appellant.

MOTION: Councilmember Chu moved and Councilmember Howe seconded to reconsider this item immediately after Item No. 8 to allow time for the applicant to confer with staff to clarify cost estimates.

VOTE: 7-0

7. **RTC 06-223 & Attachments A - E**
Attachments F - I
CONTINUATION
- Appeal of a decision of the Planning Commission for an application for a Variance on a 6,211 square-foot site from Sunnyvale Municipal Code Section 19.34.040 to allow a six-foot setback where nine feet is required. Property located at 734 Ashbourne Drive (near E. Fremont Avenue) in R-O (Low-Density Residential) Zoning District**

Mayor Swegles reopened Item No. 7 at 10:45 p.m.

Officer Ryan reported on her meeting with the appellant and clarified that the appellant would not be considering an addition to their house (with an accessible bathroom) if they did not have someone in their home with this need. They are trying to minimize the cost and the additional cost of locating the bathroom further to the rear of the property would be a minimum \$1,500 to connect to existing sewer line.

Councilmember Howe verified with Officer Ryan that the appellants could observe the City's zoning set backs (without a Variance) and could add a bedroom and a bathroom as planned (including the allowance for a wheel chair turn-around).

MOTION: Councilmember Spitaleri moved and Councilmember Hamilton seconded to approve Alternative No. 2: Grant the appeal and approve the Variance with attached conditions.

VOTE: 3-4 (Councilmembers Howe, Chu and Moylan and Mayor Swegles dissented) Motion failed.

MOTION: Councilmember Howe moved and Vice Mayor Lee seconded to continue this item to the Council Meeting of August 8, 2006 and instruct staff to work with the appellant to come up with their best estimate on what the cost of the construction would be from the alternate design.

VOTE: 7-0.

KRAMER RADIN, LLP

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FAX: (650) 949-5648

BY APPOINTMENT ONLY:
1475 S. BASCOM AVENUE, SUITE 204
CAMPBELL, CALIFORNIA 95008
(408) 377-7845

ATTORNEYS

LINDA C. KRAMER*
DEBORAH G. KRAMER RADIN
JEROME GALLI

*CERTIFIED SPECIALIST, ESTATE PLANNING, TRUST AND PROBATE LAW,
STATE BAR OF CALIFORNIA BOARD OF LEGAL SPECIALIZATION

July 18, 2006

Honorable Ron Swegles, Mayor
And Members of the City Council
City of Sunnyvale
Sunnyvale, California 94086

Re: Appeal Of Planning Commission Decision On Variance Application
Property: 734 Ashbourne Drive
Applicants: Lorraine Guerrero Maciejowski
Mieczyslaw Maciejowski

Our firm represents Lorraine Guerrero Maciejowski and Mieczyslaw Maciejowski, the applicants for a variance. This letter will address the issue of whether the City of Sunnyvale has provided a reasonable accommodation for the disability of Ms. Maciejowski's mother in the variance process.

Relevant Factual Background

Mr. and Mrs. Maciejowski seek the requested variance for the benefit of Mrs. Maciejowski's mother, Elveda Guerrero. Mrs. Guerrero is 86 years old and has a mobility impairment. Walking and standing are difficult and painful for her. She must rely on a walker or wheelchair to get around. In addition, Mrs. Guerrero has difficulty providing for her personal needs. Mrs. Guerrero requires assistance with such tasks as bathing.

The Maciejowski home contains two bathrooms, both of which present problems for Mrs. Guerrero. The master bath (which is connected to Mr. and Mrs. Maciejowski's bedroom) contains the only shower suitable for Mrs. Guerrero's use. However, the shower does not contain a chair or other place to sit. Mrs. Guerrero's age and disabilities make it difficult for her to stand in the shower and maintain her balance. In addition, the door to the master bath is not wide enough to accommodate a wheelchair or a walker.

A second bathroom contains a bathtub that is not suitable for Mrs. Guerrero's use. The lip of the bathtub requires Mrs. Guerrero to take a high step in and out of a wet tub. Getting in and out of the bathtub is a painful and potentially dangerous process that could expose Mrs. Guerrero to falls and broken bones.

To provide a reasonable accommodation for Mrs. Guerrero's disabilities, Mr. and Mrs. Maciejowski propose to remodel the existing second bathroom. The remodeled bathroom will include a wheelchair turnaround, grab bars, and a shower with a low threshold and a chair.

As will be explained in detail by Mr. and Mrs. Maciejowski, the proposed project will require moving the exterior wall 3 feet into the 9-foot side yard setback, leaving a 6-foot setback. The new addition will not bring the structure closer to any neighbors, but will extend toward the street (this is a corner lot). The entire structure will be within the existing fence line.

Legal Discussion

The Americans with Disabilities Act is a broad statute that applies to zoning applications as well as other areas, such as housing, transportation and the workplace. With regard to zoning, federal law requires cities to make reasonable accommodations in their rules, policies, practices and services.

For purposes of this subsection, discrimination includes...(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

Title 42, United States Code, section 3604(f)(3).

Project Sentinel, a non-profit agency supported by the City of Sunnyvale, has addressed the application of the Federal Fair Housing Amendments to the ADA in its letter dated July 13, 2006. A copy of the letter is attached as **Exhibit A**.

Several local cities have adopted specific ordinances to implement federal protections for the disabled in the zoning process. Copies of three examples are attached as follows:

- **Exhibit B:** Campbell Municipal Code § 21.50.010 and following;
- **Exhibit C:** San Jose Municipal Code § 20.160.010 and following;
- **Exhibit D:** San Rafael Municipal Code § 14.26.010 and following.

All three of the above-referenced municipal codes provide a process for citizens to apply for a reasonable accommodation.

A request for reasonable accommodation may be made by any person with a disability, their representative or any entity, when the application of a zoning law or other land use regulation, policy or practice acts as a barrier to fair housing opportunities.

(Exhibit D, San Rafael Municipal Code, § 14.26.020.)

The process provided by these codes includes various factors to be considered in each application. Both Campbell and San Jose consider, among other factors, the special need created by the disability and the potential benefit that can be accomplished by the

requested modification. (Exhibit B: Campbell Municipal Code § 21.50.050; Exhibit C: San Jose Municipal Code § 20.160.050.)

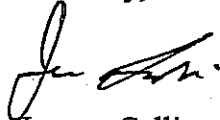
On the other hand, the City of Sunnyvale has no such ordinance. This lack of policy has left both the Applicants and the City without a process for considering reasonable accommodation requests.

Despite the lack of process built into the Municipal Code, the Applicants raised the issue of Elveda Guerrero's need for a reasonable accommodation for her disability on at least two occasions. "Ms. Guerrero noted that the reason for this addition is to accommodate a handicapped person." (Minutes from the Administrative Hearing of March 2, 2006.) A similar statement is contained in the Planning Commission Minutes of April 10, 2006.

Despite these statements, the City did not make the request for a reasonable accommodation a part of its analysis in deciding to deny the variance request. Instead, the City used its "Variance Justifications" document, a standard form, to evaluate the request. The City's failure to even consider the request for a reasonable accommodation is troubling at best, and at worst a potential violation of federal law.

For these reasons, Applicants Lorraine Guerrero Maciejowski and Mieczyslaw Maciejowski respectfully request that the City Council grant their request for a reasonable accommodation on behalf of Elveda Guerrero and grant the requested variance.

Sincerely,



Jerome Galli

ATTACHMENT 3
Page 4 of 23**project
sentinel**

The Fair Housing Center
430 Sherman Avenue, Suite 308
Palo Alto, CA 94306
Tel. (650) 321-6291 Fax (650) 321-4173
projsempa@aol.com

July 13, 2006

Sunnyvale City Council
456 West Olive Ave.
Sunnyvale, CA 94086
(408) 730-7483

RE: Appeal of a variance to the City of Sunnyvale to allow an ADA compliant addition to a private residence.

To Whom It May Concern:

Project Sentinel is a non-profit agency, supported by the City of Sunnyvale, that provides education, counseling, conciliation, investigation, and when necessary, legal referrals to persons alleging housing discrimination. We are writing you on behalf of Mrs. Lorraine Guerrero Maciejowski who currently resides at 734 Ashbourne Drive in Sunnyvale.

Project Sentinel's purpose in sending this letter is to provide you with information about the law and to aid Mrs. Maciejowski in requesting the reasonable accommodation of a variance to allow an ADA compliant addition to her home. Mrs. Elveda Guererra, Mrs. Maciejowski's mother, resides at 734 Ashbourne Drive and uses a wheelchair. Currently there is no ADA compliant bathroom in the home with adequate space for wheelchair maneuverability. Mrs. Maciejowski has plans to expand the bedroom and to add an ADA compliant bathroom in the side yard area of the property. This proposal would require that a portion of the addition be built 17 feet from the face of the curb. I understand that the Sunnyvale Municipal Code requires a minimum 20-foot setback. However, the alternative proposed by the city to add the bathroom to the back of the residence would create undue hardship for the residents. This alternate project would add considerably more cost, and could potentially create structural issues and damage the existing sewage line.

Ms. Rebecca Moon Esq., Assistant City Attorney, has advised the Planning Commission that they may use ADA Laws to grant a variance. In line with this suggestion Project Sentinel requests that as a reasonable accommodation for Mrs. Elveda Guerrero's disability you approve the variance to allow an ADA compliant addition to 734 Ashbourne Drive as proposed by Mrs. Maciejowski.

The federal Fair Housing Amendments Act ("FHAA") contains sweeping prohibitions of discrimination on the basis of disability. The FHAA makes it unlawful to discriminate against tenants with physical and mental disabilities. Discrimination against tenants with disabilities is specifically defined to include "a refusal to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford such persons equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B). Accordingly, persons with disabilities are not simply entitled to equal treatment; rather, Congress has singled them out for special treatment in the form of reasonable accommodations. California's Unruh Civil Rights Act and Fair Employment and Housing Act mirrors federal law with regard to disability discrimination. Cal. Civ. Code §§ 51-53, 54.1-54.8; Cal. Gov't Code §§ 12955-12988.

It is my hope that this letter will simply make you aware of the possible fair housing implications of this situation, and that you will choose to take the recommended action. If the council wishes to speak to Project Sentinel about these issues, feel free to contact me at (650) 321-6291 ext 104.

Sincerely,



Adriana Windham
Fair Housing Specialist

Campbell Municipal Code

Title 21 ZONING

Chapter 21.50 REASONABLE ACCOMMODATIONS

21.50.010 Purpose of chapter.

It is the policy of the city to provide reasonable accommodation for persons with disabilities seeking fair access to housing in the application of its zoning laws. The purpose of this chapter is to provide a process for making a request for reasonable accommodation. (Ord. 2043 §1(part), 2004).

Chapter 21.50 REASONABLE ACCOMMODATIONS

A. Form to be provided by the community development director. Any person who requires reasonable accommodation, because of a disability, in the application of a zoning law which may be acting as a barrier to fair housing opportunities may do so on a form to be provided by the community development director.

B. Filed with application for other permit or approval. If the project for which the request is being made also requires some other land use permit or approval, then the applicant shall file the request together with the application for the permit or approval. (Ord. 2043 §1(part), 2004).

Title 21 ZONING

Chapter 21.50 REASONABLE ACCOMMODATIONS

21.50.030 Required information.

The applicant shall provide the following information:

- A. Name. Applicant's name, address, and telephone number;
- B. Address. Address of the property for which the request is being made;
- C. Use of property. The current actual use of the property;
- D. Relevant provision or regulation. The Zoning Code provision, regulation, or policy from which accommodation is being requested; and
- E. Basis for claim. The basis for the claim that the individual is considered disabled under the Fair Housing Act and why the accommodation is necessary to make the specific housing available to the individual. (Ord. 2043 §1(part), 2004).

Title 21 ZONING

Chapter 21.50 REASONABLE ACCOMMODATIONS

21.50.040 Notice of request for accommodation.

Written notice that a request for reasonable accommodation shall be given as follows:

A. Mailed to all immediately adjacent property owners. In the event that there is no approval sought other than the request for reasonable accommodation, the notice shall be mailed to the owners of record of all properties which are immediately adjacent to the property which is the subject of the request.

B. Mailed in compliance with Chapter 21.64 (Public Hearings). In the event that the request is being made in conjunction with some other process, the notice shall be mailed along with the notice of the other proceeding, in compliance with Chapter 21.64 (Public Hearings). (Ord. 2043 §1(part), 2004).

Title 21 ZONING

Chapter 21.50 REASONABLE ACCOMMODATIONS

21.50.050 Grounds for accommodation.

In making a determination regarding about the reasonableness of a requested accommodation, the following factors shall be considered:

- A. Special needs. Special need created by the disability;
- B. Potential benefit. Potential benefit that can be accomplished by the requested modification;
- C. Potential impacts. Potential impact on surrounding uses;
- D. Physical attributes. Physical attributes of the property and structures;
- E. Alternative accommodations. Alternative accommodations which may provide an equivalent level of benefit;
- F. A single housekeeping unit. In the case of a determination involving a single-family dwelling, whether the household would be considered a single housekeeping unit if it were not using special services that are required because of the disabilities of the residents;
- G. Imposition of financial or administrative burden. Whether the requested accommodation would impose an undue financial or administrative burden on the city. (Ord. 2043 §1(part), 2004).

Title 21 ZONING

Chapter 21.50 REASONABLE ACCOMMODATIONS

21.50.060 Notice of proposed decision.

A. Notice of decision. Notice of the proposed decision shall be made in the same manner as provided in Section 21.50.040 (Notice of Request for Accommodation), above.

Such notice shall inform property owners that within 10 days of the date the notice is mailed, any person may make a written request for a community development director's hearing.

B. Decision shall become final. If no request for hearing is received, the proposed decision shall become a final community development director's decision.

C. Community development director's hearing. If someone requests a hearing, the community development director shall conduct a hearing on the request for reasonable accommodation at which all reasonable evidence and credible testimony shall be considered. (Ord. 2043 §1 (part), 2004).

Title 21 ZONING

Chapter 21.50 REASONABLE ACCOMMODATIONS

21.50.070 Notice of community development director's decision.

- A. Decision notice. The community development director shall issue a notice of decision either granting the request, including any reasonable conditions, or disapproving the request after the required noticing period has ended or a community development director's hearing has been held.
- B. Notice shall contain findings. The notice of decision shall contain the community development director's factual findings, conclusions, and reasons for the decision.
- C. Mailing of notice. The notice of decision shall be mailed in the same manner as identified in Section 21.50.040 (Notice of Request for Accommodation), above.
- (Ord. 2043 §1(part), 2004).

Title 21 ZONING

Chapter 21.50 REASONABLE ACCOMMODATIONS

21.50.080 Appeal to planning commission.

A. May appeal within 10 days. Within 10 days after the notice of community development director's decision, any person may appeal in writing to the planning commission in compliance with Chapter 21.62 (Appeals).

B. Grounds for appeal. All appeals shall contain a statement of the grounds for the appeal in compliance with Chapter 21.62 (Appeals). (Ord. 2043 §1(part), 2004).

San Jose Municipal Code

application for such permit or approval.

(Ord. 26248.)

20.160.030 Required information.

The applicant shall provide the following information:

1. Applicant's name, address and telephone number;
2. Address of the property for which the request is being made;
3. The current actual use of the property;
4. The zoning code provision, regulation or policy from which accommodation is being requested;
5. The bases for the claim that the individual is considered disabled under the Fair Housing Act and why the accommodation is necessary to make the specific housing available to the individual.

(Ord. 26248.)

20.160.040 Notice of request for accommodation.

Written notice of a request for reasonable accommodation shall be given as follows:

1. In the event that there is no approval sought other than the request for reasonable accommodation, the notice shall be mailed to the owners of record of all properties which are immediately adjacent to the property which is the subject of the request.
2. In the event that the request is being made in conjunction with some other process, the notice shall be transmitted along with the notice of the other proceeding.

(Ord. 26248.)

20.160.050 Grounds for accommodation.

In making a determination regarding the reasonableness of a requested accommodation, the following factors shall be considered:

1. Special need created by the disability;
2. Potential benefit that can be accomplished by the requested modification;
3. Potential impact on surrounding uses;

A. Within thirty days after the notice of director's decision, any person may appeal in writing to the planning commission.

(Ord. 26455.)

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San Rafael Municipal Code

Title 14* ZONING

Chapter 14.26 REQUESTS FOR REASONABLE ACCOMMODATION14.26.010 Purpose.14.26.020 Applicability.14.26.030 Application requirements.14.26.040 Review authority.14.26.050 Public notice.14.26.060 Findings and decision.14.26.070 Appeal of determination.**14.26.010 Purpose.**

This chapter provides a procedure to request reasonable accommodation for persons with disabilities seeking equal access to housing under the Federal Fair Housing Act and the California Fair Employment and Housing Act (the Acts) in the application of zoning laws and other land use regulations, policies and procedures. (Ord. 1838 § 54 (part), 2005).

14.26.020 Applicability.

A. Authorized Applicants. A request for reasonable accommodation may be made by any person with a disability, their representative or any entity, when the application of a zoning law or other land use regulation, policy or practice acts as a barrier to fair housing opportunities. A person with a disability is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities, anyone who is regarded as having such impairment or any who has a record of such impairment. This chapter is intended to apply to those persons who are defined as disabled under the Acts.

B. Elimination of Regulatory Barriers. A request for reasonable accommodation may include a modification or exception to the rules, standards and practices for the siting, development and use of housing or housing-related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to housing of their choice. A request for reasonable accommodation shall comply with Section 14.26.030 (Application requirements) of this chapter. (Ord. 1838 § 54 (part), 2005).

14.26.030 Application requirements.

A. Application. A request for reasonable accommodation shall be initiated by submitting to the community development department a completed application form, signed by the property owner or authorized agent, accompanied by the required fee, and the following information submitted in the form of a letter to the community development director:

1. The applicant's name, address and telephone number;
2. Address of the property for which the request is being made;
3. The current use of the property;
4. The basis for the claim that the individual is considered disabled under the Acts;
5. The zoning code provision or other city regulation or policy from which reasonable accommodation is being requested; and
6. An explanation of why the reasonable accommodation is necessary to make the specific property accessible to the individual.

B. Review with Other Planning Applications. If the project for which the request for reasonable accommodation is being made also requires some other discretionary planning approval (such as a use permit, environmental and design review permit, zone change, general plan amendment or subdivision), then the applicant shall file the information required by subsection A of this section together for concurrent review with the application(s) for discretionary approval. (Ord. 1838 § 54 (part), 2005).

14.26.040 Review authority.

A. Community Development Director. A request for reasonable accommodation shall be reviewed by the community development director if no planning approval is sought other than the request for reasonable accommodation.

B. Other Review Authority. A request for reasonable accommodation submitted for concurrent review with another discretionary planning approval shall be reviewed by the authority reviewing the discretionary planning application. (Ord. 1838 § 54 (part), 2005).

14.26.050 Public notice.

Written notice that a request for reasonable accommodation has been filed shall be given as follows:

A. Community Development Director Authority. For a request subject to review by the community development director, a notice shall be mailed to the owners of record of all properties which are immediately adjacent to the project which is the subject of the request at least fifteen (15) days prior to the decision by the director.

B. Other Review Authority. For a request made in conjunction with another discretionary planning approval, notice shall be given in the manner prescribed for the other discretionary planning

application. (Ord. 1838 § 54 (part), 2005).

14.26.060 Findings and decision.

A. Findings. The written decision to grant or deny a request for reasonable accommodation shall be consistent with the Acts and shall be based on consideration of the following factors:

1. Whether the housing, which is the subject of the request, will be used by an individual with a disability under the Acts;
2. Whether the request for reasonable accommodation is necessary to make specific housing available to an individual with a disability under the Acts;
3. Whether there is an alternative accommodation which may provide an equivalent level of benefit;
4. Whether the requested accommodation would negatively impact surrounding uses or properties;
5. Whether the requested reasonable accommodation would impose an undue financial or administrative burden on the city; and
6. Whether the requested reasonable accommodation would require a fundamental alteration in the nature of a city program or law, including, but not limited to, land use and zoning.

B. Conditions of Approval. In granting a request for reasonable accommodation, the reviewing authority may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would comply with the findings required in subsection A of this section. (Ord. 1838 § 54 (part), 2005).

14.26.070 Appeal of determination.

A determination by the review authority to grant or deny a request for reasonable accommodation may be appealed in accordance with Chapter 14.28, Appeals, of this title. (Ord. 1838 § 54 (part), 2005).

